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8 Attorneys for Plaintiff
VERIGY US, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

15 | VERIGY US, INC, a Delaware Corporation

Case No. C07 04330 RMW (HRL)

16 Plaintiff,

**VERIGY'S OBJECTIONS TO EVIDENCE
SUBMITTED BY DEFENDANTS' IN
SUPPORT OF MOTIONS FOR
SUMMARY ADJUDICATION AND FOR
MODIFICATION OF PRELIMINARY
INJUNCTION**

17 || VS.

18 ROMI OMAR MAYDER, an individual;
19 WESLEY MAYDER, an individual; SILICON
TEST SYSTEMS, INC., a California Corporation;
20 and SILICON TEST SOLUTIONS, LLC, a
California Limited Liability Corporation,
inclusive,

Defendants.

Date: September 5, 2008

Time: 9:00 am

Ctrm.: 6

Judge: Hon. Ronald M. Whyte

Complaint Filed: August 22, 2007
Trial Date: None Set

AND RELATED CROSS ACTIONS

1 Plaintiff Verigy US, Inc. ("Verigy") hereby objects to the following evidence submitted by
 2 defendants in support of their motion for summary adjudication and for modification of
 3 preliminary injunction currently set for hearing on September 5, 2008 before the above-named
 4 Court.

5 **A. DECLARATION OF RICHARD BLANCHARD IN SUPPORT OF MOTION
 6 FOR SUMMARY ADJUDICATION, ETC. (Docket No. 262)**

7 **OBJECTION NO. 1:**

8 Verigy objects to and moves to strike the following portion of Paragraph 5 of the Blanchard
 9 Declaration (p.2:5-9) which states:

10 *"Given that I had never received a copy of the complete TRO prior to July 2, 2008, it is
 11 unlikely that even had I been asked to do so that I would have been in a position to give technical
 12 advice about the scope of the purported trade secrets that were or were not covered, nor the
 13 technical activities that were or were not enjoined."*

14 **Grounds for Objection:**

15 Verigy objects to and moves to strike the sentence of the paragraph because it is made in
 16 violation of Civil L.R. 7-5(b) which provides that a "statement made on information and belief
 17 must state the basis therefore. An affidavit or declaration not in compliance with this rule may be
 18 stricken in whole or in part." It is also objectionable because "a hypothetical answer based on
 19 facts which are not shown to exist is not evidence." *Heard v. U.S.* 348 F.2d 43, 46, n.5 (D.C. Cir.
 20 1964). Moreover it is objectionable because "it is well established by the weight of authority that
 21 expert testimony may not be received unless it appears that the witness is in possession of such
 22 facts as would enable him to express a reasonably accurate conclusion as distinguished from a
 23 mere guess or conjecture." *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4th Cir. 1949).

24 The opinion is conjecture, based on speculation as to what the witness might have done
 25 under a certain set of assumed facts. What Dr. Blanchard might have done, over a year ago, had
 26 Defendants' prior attorneys presented him with the 'complete TRO,' is, a year later, speculation.
 27 There is no showing that the facts underlying his assumption exist. Indeed, Dr. Blanchard admits
 28 the opposite is true. Dr. Blanchard did not see the complete TRO so cannot testify now as to what

1 he would have done then.

2 **OBJECTION NO. 2**

3 Verigy objects to and moves to strike the following portion of Paragraph 9 of the Blanchard
4 Declaration (p.5:9-15) which states:

5 *“Therefore, I feel that, in working with potential customers such as the Specific STS
6 Potential Customer, Romi Mayder would have needed less than this four-to-six month range of
7 time to independently research, develop, determine, and otherwise compile all of the information
8 in what I understand to be the product specification that would be submitted to a chip
9 manufacturer for the Flash enhancer product from public and readily ascertainable sources and
10 customer requirements (from companies such as the Specific STS Potential Customer) without
11 relying upon any of Verigy’s claimed trade secret information.”*

12 **Grounds for Objection:**

13 Verigy objects to and moves to strike the sentence of the paragraph because it is made in
14 violation of Civil L.R. 7-5(b) which provides that a “statement made on information and belief
15 must state the basis therefore. An affidavit or declaration not in compliance with this rule may be
16 stricken in whole or in part.” Moreover, it is objectionable because “it is well established by the
17 weight of authority that expert testimony may not be received unless it appears that the witness is
18 in possession of such facts as would enable him to express a reasonably accurate conclusion as
19 distinguished from a mere guess or conjecture.” *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4th
20 Cir. 1949). The declaration itself must contain facts showing the declarant’s connection with the
21 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
22 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999).

23 Here, Dr. Blanchard has not established what evidence from the STS Potential Customer he
24 reviewed which would lead him to believe that the customer was “particularly motivated” such as
25 to show the referenced time frame needed by Mayder is accurate. (See Blanchard Declaration, ¶ 9,
26 p. 5:6-9). In the absence of such evidence, this opinion in Dr. Blanchard’s declaration lacks
27 foundation and must be excluded.

28 //

OBJECTION NO. 3

Verigy objects to and moves to strike Paragraph 10 of the Blanchard Declaration (p.5:16-6:1) (Text omitted)

Grounds for Objection:

Verigty objects to and moves to strike the paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, “a witness should not ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. It is also objectionable because “it is well established by the weight of authority that expert testimony may not be received unless it appears that the witness is in possession of such facts as would enable him to express a reasonably accurate conclusion as distinguished from a mere guess or conjecture.” *Gilbert v. Gulf Oil Corp.* 175 F.2d 705, 709 (4th Cir. 1949). Verigty further objects that the evidence is cumulative and should be excluded pursuant to F.R.E 403 (exclusion of cumulative or relevant evidence based on grounds of prejudice, confusion or waste of time).

Dr. Blanchard is not a damages expert nor has he established that he has the requisite knowledge, skill, experience, training or education to testify as to royalty rates in the context of the technology at issue here. His declaration is devoid of any statements as to his qualifications to testify on damages, other than the statement that he has “been involved in projects and cases in which royalty rates” have figured. (Blanchard Declaration, p. 5:16-17). He does not define ‘projects’ or ‘cases,’ nor what his role was, much less state his particular expertise at establishing or defining royalty rates. In the absence of such qualifications, this entire paragraph should be stricken on that basis and under F.R.E. 403 on the grounds that any probative value of the

1 evidence is non-existent and outweighed by the prejudice to Verity of such unsubstantiated
2 testimony.

B. DECLARATION OF GARY MAYDER IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION, ETC. (Docket No. 261-19)

OBJECTION NO. 4:

6 Verigy objects to and moves to strike the entire Declaration of Gary Mayder (Text
7 omitted)

8 || Grounds for Objection:

9 Verigy objects to and moves to strike the declaration because it is made in violation of
10 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
11 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
12 Any statement made on information and belief must state the basis therefore. An affidavit or
13 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
14 objects to the declaration and the statements within because they are irrelevant, in violation of
15 F.R.E. 402. Verigy further objects to the statements because they constitute opinion testimony, do
16 not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d
17 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the declarant’s
18 connection with the matters stated therein, establishing the source of his or her information.
19 F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, “a
20 witness should not ordinarily be allowed to express an opinion upon a subject matter concerning
21 which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. Verigy
22 further objects that the evidence is cumulative and should be excluded pursuant to F.R.E 403
23 (exclusion of cumulative or relevant evidence based on grounds of prejudice, confusion or waste
24 of time).

25 The declaration gives Mr. Gary Mayder's family history of education and experience, as
26 well as a limited view into Defendant Romi Mayder's work experience. The conclusion (i.e.,
27 opinion) of Gary Mayder is that his son is capable of handling complex electrical engineering
28 assignments. Since it does not reference the trade secrets at issue here, it is a conclusion in a

1 vacuum. It is irrelevant. Initially, the proffered testimony does not have ‘any tendency to
 2 make the existence of any fact that is of consequence to the determination of the action more
 3 probable or less probable’ than without it. F.R.E. 401. Nothing to which Gary Mayder testifies
 4 makes it more or less probable that material facts concerning Defendants’ misappropriation of
 5 trade secrets and breach of contract with Verigy, *inter alia*, occurred. Ostensibly, the testimony
 6 might bear some relationship to the amount of time it would take Defendant Mayder to develop
 7 the Flash Enhancer product. But, the testimony does not have the appropriate factual or expert
 8 basis. There is no statement by Gary Mayder that he reviewed the technology at issue here, nor
 9 that he has the qualifications to opine about them. Even if he did have the requisite foundation to
 10 so testify, the evidence is cumulative. Dr. Blanchard also proffered his opinion on Defendant
 11 Mayder’s abilities. As such, the entire declaration should be stricken.

12 **C. DECLARATION OF ROMI MAYDER IN SUPPORT OF MOTION FOR
 13 SUMMARY AJDUDICATION, ETC. (Docket No. 261-2)**

14 **OBJECTION NO. 5:**

15 Verigy objects to and moves to strike paragraphs 2-4 of the Declaration of Romi Mayder
 16 (Text omitted)

17 **Grounds for Objection:**

18 Verigy objects to and moves to strike the paragraphs because the statements within are
 19 irrelevant, in violation of F.R.E. 402. Verigy further objects that the evidence is cumulative and
 20 should be excluded pursuant to F.R.E. 403 (exclusion of cumulative or relevant evidence based on
 21 grounds of prejudice, confusion or waste of time).

22 The paragraphs give Defendant Romi Mayder’s family history of his own education and
 23 experience. The proffered testimony does not have ‘any tendency to make the existence
 24 of any fact that is of consequence to the determination of the action more probable or less
 25 probable’ than without it. F.R.E. 401. Nothing in these paragraphs makes it more or less probable
 26 that material facts concerning Defendants’ misappropriation of trade secrets and breach of contract
 27 with Verigy, *inter alia*, occurred. Neither Defendant Romi Mayder nor anyone in his family has
 28 been disclosed as an expert such experience and qualification do not bear on any issue in the case.

1 The testimony should also be excluded as consuming too much time and having limited probative
 2 value.

3 **OBJECTION NO. 6:**

4 Verigy objects to and moves to strike certain sentences of paragraph 10 of Defendant Romi
 5 Mayder including all beginning with “*My previous lawyers at Mount & Stoekler, P.C. never*
 6 *advocated with opposing counsel or otherwise with the Court that the Protective Order*
 7 *designations be lifted so that I could be allowed to read the entire unredacted TRO and certainly*
 8 *not with all of the referenced materials*” and ending with “*Obviously, this comes far too late in this*
 9 *case and it should have been allowed months if not nearly a year ago.*” (p.3:3-22)

10 **Grounds for Objection:**

11 Verigy objects to and moves to strike these sentences within the declaration because they
 12 are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain
 13 facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid
 14 conclusions and argument. Any statement made on information and belief must state the basis
 15 therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or
 16 in part.” Verigy further objects to the statements because they constitute opinion testimony, do
 17 not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d
 18 1237, 1251 (9th Cir. 2000). Verigy further objects that much of the testimony is inadmissible
 19 hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and
 20 should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of
 21 prejudice, confusion or waste of time).

22 Mayder largely testifies outside of his own personal knowledge, about what others did. He
 23 attempts to testify about what his attorneys did as it relates to Verigy’s counsel, when his attorneys
 24 are best positioned to so testify based on personal knowledge. (Mayder Declaration, p.3:2-9; 18-
 25 22). Mr. Mayder’s speculation on what he may or may not have done in certain circumstances is
 26 just that: speculation which is also irrelevant. (Id., p.3: 9-17). The testimony should also be
 27 excluded as consuming too much time and having limited probative value.

28 //

OBJECTION NO. 7:

Verigy objects to and moves to strike paragraph 12 of Defendant Romi Mayder (Text Omitted). (p.4:11-16).

Grounds for Objection:

Verigy objects to and moves to strike these sentences within the declaration because they are made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

Mr. Mayder should not be permitted to testify about his past attorney's motivations, nor to those of Verigy's counsel. Such testimony is speculative and irrelevant. His conclusive statement that he has "not violated the Protective Order" is without foundation and calls for a legal conclusion. (Mayder Declaration, p. 4:4-5). Mayder is not qualified to so testify. He cannot testify as to his understanding of "how the Protective Order has been used by" Verigy because this is at best speculative ramblings of a non-lawyer on matters of legal strategy, and at worst inappropriate and unfounded argument in the guise of 'testimony.' (Id., p.4:5-9). Mayder cannot testify as to what the motivations of Verigy and its counsel were and have been in this litigation. (Id., p.4:5-16). If this is expert testimony, it lacks foundation and Mr. Mayder does not have the appropriate qualifications to so testify. If not, it is speculative and Mr. Mayder lacks personal knowledge to so testify. In both cases, the testimony should also be excluded as consuming too much time and having limited probative value.

OBJECTION NO. 8:

Verigy objects to and moves to strike paragraph 14 of Defendant Romi Mayder (Text Omitted). (p.4:17-26).

Grounds for Objection:

Verigy objects to and moves to strike this paragraph because it is made in violation of Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made on information and belief must state the basis therefore. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further objects to the statements because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

There are no facts based on personal knowledge in this paragraph. Mr. Mayder should not be permitted to testify about the motivations of Verigy’s counsel. Such testimony is speculative and irrelevant. Mayder is also not qualified to so testify. He cannot testify as to his understanding of what Verigy “knows full well” because this is at best speculative ramblings of a non-lawyer on matters of legal strategy, and at worst inappropriate and unfounded argument in the guise of ‘testimony.’ If this is expert testimony, it lacks foundation and Mr. Mayder does not have the appropriate qualifications to so testify. If not, it is speculative and Mr. Mayder lacks personal knowledge to so testify. Mayder also cannot testify as to what Mr. Pasquinelli and Mount & Stoelker said about Exhibit 7 as such testimony is hearsay.

OBJECTION NO. 9:

Verigy objects to and moves to strike paragraph 15 of Defendant Romi Mayder (Text

1 Omitted). (p.4:27-5:4).

2 **Grounds for Objection:**

3 Verigy objects to and moves to strike this paragraph because it is made in violation of
 4 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 5 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 6 Any statement made on information and belief must state the basis therefore. An affidavit or
 7 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
 8 objects to the statements because they constitute opinion testimony, do not satisfy the
 9 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 10 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the
 11 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 12 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects that much of the
 13 testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because
 14 they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence
 15 based on grounds of prejudice, confusion or waste of time).

16 There are no facts based on personal knowledge in this paragraph. Moreover, Mayder
 17 testifies as to the content of the properties window of the NDA, which violates the hearsay rule.
 18 (F.R.E. 801). There is otherwise no foundation for Mayder to testify as to the author of the NDA.
 19 As such the testimony should be stricken.

20 **OBJECTION NO. 10:**

21 Verigy objects to and moves to strike paragraph 16 of Defendant Romi Mayder (Text
 22 Omitted). (p.4:27-5:4).

23 **Grounds for Objection:**

24 Verigy objects to and moves to strike this paragraph because it is made in violation of
 25 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 26 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 27 Any statement made on information and belief must state the basis therefore. An affidavit or
 28 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further

1 objects to the statements because they constitute opinion testimony, do not satisfy the
 2 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 3 Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the
 4 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 5 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects that much of the
 6 testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the statements because
 7 they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence
 8 based on grounds of prejudice, confusion or waste of time).

9 There are no facts based on personal knowledge in this paragraph. Mayder's testimony on
 10 Verigy's counsel's motivations is, again, argument under the guise of speculative and inadmissible
 11 expert testimony. There is no foundation for Mayder to speculate as to why he is 'convinced' on
 12 the motivations of Verigy's counsel, if such testimony was relevant, which it is not. On that basis,
 13 and its cumulative and speculative nature, such the testimony should be stricken.

14 **OBJECTION NO. 11:**

15 Verigy objects to and moves to strike paragraph 18 of Defendant Romi Mayder (Text
 16 Omitted). (p.5:23-28).

17 **Grounds for Objection:**

18 Verigy objects to and moves to strike this paragraph because it is made in violation of
 19 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
 20 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 21 Any statement made on information and belief must state the basis therefore. An affidavit or
 22 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further
 23 objects to the statements because they constitute opinion testimony, do not satisfy the
 24 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 25 Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the
 26 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 27 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, "a witness should not
 28 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an

1 expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. Verigy further objects to
 2 the statements because they are speculative and should be excluded pursuant to F.R.E 403
 3 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of time).

4 There are no facts based on personal knowledge in this paragraph. The paragraph is
 5 largely argument and opinion. Mayder speculates on his and his attorneys’ course of action, “had
 6 he been allowed to see the entire unredacted TRO.” (Mayder Declaration, p.5:23). To the extent
 7 he opines on what he would have done had he seen the technical details of the trade secrets, he is
 8 speculating and testifying as an expert. He was not declared as an expert. Defendants have
 9 retained and used Dr. Robert Blanchard in this role. As such not only does the opinion exceed the
 10 scope of Mayder’s competency, but is cumulative of any testimony provided by Dr. Blanchard. In
 11 this regard, and in light of its minimal relevance, the paragraph should be stricken under F.R.E.
 12 403 and Civil L.R. 7-5(b).

13 **OBJECTION NO. 12:**

14 Verigy objects to and moves to strike paragraph 19 of Defendant Romi Mayder (Text
 15 Omitted). (p.6:2-7).

16 **Grounds for Objection:**

17 Verigy objects to and moves to strike this paragraph because it is made in violation of
 18 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 19 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 20 Any statement made on information and belief must state the basis therefore. An affidavit or
 21 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
 22 objects to the statements because they constitute opinion testimony, do not satisfy the
 23 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 24 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the
 25 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 26 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects that much of the
 27 testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects that much of the testimony
 28 is secondary evidence of the content of a writing. F.R.E. 1002. Verigy further objects to the

1 statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion
 2 of relevant evidence based on grounds of prejudice, confusion or waste of time).

3 There are no facts based on personal knowledge in this paragraph. The first sentence is
 4 argument, devoid of facts. The second sentence is hearsay and evidence of the content of a
 5 declaration already submitted. The third sentence is inadmissible hearsay offered for the truth of
 6 the matter stated therein, and therefore inadmissible. This is not a statement to offer state of mind
 7 or provide context to actions in response to the statement and hence not hearsay. Notwithstanding
 8 that Mayder is now informing the Court that contents of his previous declaration are inaccurate
 9 and cannot be trusted, calling into doubt whether any of the contents of this declaration are
 10 accurate and can be trusted, Mayder offers Dan Mount's statements about Mayder's post-TRO
 11 activities for its truth – i.e. that Dan Mount said them. The final statement on use of the Protective
 12 Order by Verigy is argument at worst and at best inadmissible expert opinion on legal decisions,
 13 which is irrelevant. As it is without any probative value, it also should be excluded under F.R.E.
 14 403.

15 **OBJECTION NO. 13:**

16 Verigy objects to and moves to strike the final sentence of paragraph 20 of Defendant Romi
 17 Mayder which states:

18 “*The brief does not even attempt to explain to the Court that many critical documents
 19 referenced by the TRO were marked ‘FILED UNDER SEAL’.*” (p.6:11-13).

20 **Grounds for Objection:**

21 Verigy objects to and moves to strike this sentence because it is made in violation of Civil
 22 L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as much as
 23 possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any
 24 statement made on information and belief must state the basis therefore. An affidavit or
 25 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
 26 objects that much of the testimony is secondary evidence of the content of a writing. F.R.E. 1002.
 27 Verigy further objects to the statements because they are speculative and should be excluded
 28 pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or

1 waste of time).

2 The sentence in question is argument, interpretation of the contents of a writing, and
 3 inadmissible hearsay. Notwithstanding that Mayder does not accurately identify the brief to which
 4 he is referring, the Court will be well aware of the content of all Defendants' submissions.
 5 Mayder's testimony summarizing and interpreting those contents is unnecessary and inadmissible.

6 **OBJECTION NO. 14:**

7 Verigy objects to and moves to strike paragraph 21 of Defendant Romi Mayder (Text
 8 Omitted). (p.6:14-23).

9 **Grounds for Objection:**

10 Verigy objects to and moves to strike this paragraph because it is made in violation of
 11 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
 12 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 13 Any statement made on information and belief must state the basis therefore. An affidavit or
 14 declaration not in compliance with this rule may be stricken in whole or in part." Verigy further
 15 objects to the statements because they constitute opinion testimony, do not satisfy the
 16 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 17 Cir. 2000). The declaration itself must contain facts showing the declarant's connection with the
 18 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 19 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, "a witness should not
 20 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an
 21 expert." *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. Verigy further objects
 22 that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy further objects to the
 23 statements because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion
 24 of relevant evidence based on grounds of prejudice, confusion or waste of time).

25 There are no facts based on personal knowledge in this paragraph. It is argument and
 26 opinion, without basis. Mayder's statement that he "believed then" that he was in compliance
 27 with the Court's TRO is belied by his own admission in the same paragraph. In subsection (a) of
 28 that paragraph Mayder admits that he had not read the entire TRO and could not state he was in

1 compliance with it as a result. There is thus no basis for his belief. In waiving the attorney-client
 2 privilege with Mount & Stoekler, Mayder admits those attorneys told him it was opinion and legal
 3 conclusion to state he was in compliance with TRO. Although hearsay, they provide the basis for
 4 excluding his current statement that he believes he is now in compliance with the TRO. Such a
 5 statement is opinion (not fact) which Mayder is not qualified to make. Having no probative value,
 6 the paragraph should be excluded from evidence under F.R.E. 403.

7 **OBJECTION NO. 15:**

8 Verigy objects to and moves to strike paragraph 22 of Defendant Romi Mayder (Text
 9 Omitted). (p.6:24-26).

10 **Grounds for Objection:**

11 Verigy objects to and moves to strike this paragraph because it is made in violation of
 12 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 13 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 14 Any statement made on information and belief must state the basis therefore. An affidavit or
 15 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
 16 objects to the statements because they constitute opinion testimony, do not satisfy the
 17 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 18 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the
 19 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 20 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects to the statements
 21 because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant
 22 evidence based on grounds of prejudice, confusion or waste of time).

23 There are no facts based on personal knowledge in this paragraph. Mayder’s
 24 “understanding” of who has read the unredacted TRO lacks foundation, is speculation, and is
 25 irrelevant. In light of such irrelevance and its lack of foundation, the paragraph is also excludable
 26 under F.R.E. 403.

27 **OBJECTION NO. 16:**

28 Verigy objects to and moves to strike paragraph 24 of Defendant Romi Mayder (Text

1 Omitted). (p.7:3-8).

2 **Grounds for Objection:**

3 Verigy objects to and moves to strike this paragraph because it is made in violation of
 4 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 5 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 6 Any statement made on information and belief must state the basis therefore. An affidavit or
 7 declaration not in compliance with this rule may be stricken in whole or in part.” Verigy further
 8 objects to the statements because they constitute opinion testimony, do not satisfy the
 9 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 10 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the
 11 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 12 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Verigy further objects to the statements
 13 because they are speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant
 14 evidence based on grounds of prejudice, confusion or waste of time).

15 There are no facts based on personal knowledge in this paragraph. Mayder’s opinion on
 16 whether he was in compliance with the TRO is inadmissible expert opinion and legal conclusion.
 17 Because he admits that he did not read the complete TRO and was not informed of its contents by
 18 prior counsel, his opinion that he previously did not violate the TRO lacks foundation, is
 19 speculation, and is irrelevant. In light of such irrelevance and its lack of foundation, the paragraph
 20 is also excludable under F.R.E. 403.

21 **OBJECTION NO. 17:**

22 Verigy objects to and moves to strike the following statement from paragraph 25 of
 23 Defendant Romi Mayder which states:

24 “...which demonstrates that the general concept for the Flash Enhancer is publicly
 25 disclosed.” (p.7:11-12).

26 **Grounds for Objection:**

27 Verigy objects to and moves to strike this paragraph because it is made in violation of
 28 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as

1 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 2 Any statement made on information and belief must state the basis therefore. An affidavit or
 3 declaration not in compliance with this rule may be stricken in whole or in part.” Verigay further
 4 objects to the statements because they constitute opinion testimony, do not satisfy the
 5 requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th
 6 Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with the
 7 matters stated therein, establishing the source of his or her information. F.R.E. 602; *see, United*
 8 *States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, “a witness should not
 9 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an
 10 expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. Verigay further objects
 11 that the testimony is inadmissible hearsay. F.R.E. 801. Verigay further objects to the statement
 12 because it is speculative and should be excluded pursuant to F.R.E 403 (exclusion of relevant
 13 evidence based on grounds of prejudice, confusion or waste of time).

14 Mayder’s statement is not one of fact, but his opinion on what the ‘recently published
 15 patent applications and other papers’ show. (Mayder Declaration, p. 7:10-11). Because he
 16 attempts to relay the contents of those publications in a summary, the testimony is inadmissible
 17 hearsay. There is also no foundation for Mayder to interpret the contents of patent applications as
 18 applied to the trade secrets in this case. Because he is not qualified to render an opinion on what
 19 the patent applications demonstrate, the testimony exceeds the scope of the witness’ competency.
 20 To the extent he is not competent to so testify, the evidence lacks probative value and should be
 21 excluded under F.R.E. 403 as likely to confuse the issues and consume undue amounts of time.

22 **OBJECTION NO. 18:**

23 Verigay objects to and moves to strike paragraph 26 of Defendant Romi Mayder (Text
 24 Omitted). (p.7:19-28).

25 **Grounds for Objection:**

26 Verigay objects to and moves to strike this paragraph because it is made in violation of
 27 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 28 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.

1 Any statement made on information and belief must state the basis therefore. An affidavit or
 2 declaration not in compliance with this rule may be stricken in whole or in part.” Verigay further
 3 objects to the testimony as irrelevant. F.R.E. 402. Verigay further objects to the statements
 4 because they constitute opinion testimony, do not satisfy the requirements of F.R.E. 701, and
 5 should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself
 6 must contain facts showing the declarant’s connection with the matters stated therein, establishing
 7 the source of his or her information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093,
 8 1104 (9th Cir. 1999). Verigay further objects that much of the testimony is inadmissible hearsay.
 9 F.R.E. 801. Verigay further objects to the statements because they are speculative and should be
 10 excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice,
 11 confusion or waste of time).

12 Mayder’s statement that his company is having financial difficulty is inadmissible as
 13 irrelevant. F.R.E. 402. His attribution of the cause of the financial difficulty is inadmissible
 14 opinion testimony which lacks foundation and exceeds the scope of Mayder’s competency. He is
 15 also not competent to testify as to what communications his attorneys have had with Verigay’s
 16 attorneys. (Mayder Declaration, p. 7:21-24). His restatement of what his Russo & Hale attorneys
 17 told him about such conversations not only waives the attorney client privilege and attorney work
 18 product protections, but is inadmissible hearsay. (Id., 7:24-27). Finally, his statement on what he
 19 believes is the intent of Verigay’s litigation strategy is unfounded speculation, as well as irrelevant.
 20 (7:27-28). Since the paragraph contains only inadmissible statements without probative value,
 21 F.R.E. 403 favors preclusion of the paragraph, which should be stricken.

22 **OBJECTION NO. 19:**

23 Verigay objects to and moves to strike paragraph 27 of Defendant Romi Mayder, entitled
 24 **“BOB POCHOWSKI’S CREDIBILITY.”** (Text Omitted). (p.8:2-24).

25 **Grounds for Objection:**

26 Verigay objects to and moves to strike this paragraph because it is made in violation of
 27 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 28 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.

1 Any statement made on information and belief must state the basis therefore. An affidavit or
 2 declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is
 3 irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion
 4 testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v.*
 5 *Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the
 6 declarant’s connection with the matters stated therein, establishing the source of his or her
 7 information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999).
 8 Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigy
 9 further objects to the statements because they are speculative and should be excluded pursuant to
 10 F.R.E 403 (exclusion of relevant evidence based on grounds of prejudice, confusion or waste of
 11 time).

12 Verigy objects to and moves to strike Paragraph 27 of the Declaration of Romi Mayder
 13 insofar as he purports to summarize and characterize the deposition testimony of non-party Robert
 14 Pochowski. Mayder cannot testify to the contents of emails and then characterize Pochowski as a
 15 liar. Such a summary is hearsay. Also, the paragraph is improper argument masquerading as
 16 factual testimony. Because it is argument, it has no relevance. Separate and apart from relevancy
 17 issues, Mayder’s opinion that Pochowski “changed his story and is not truthful” invades the
 18 province of the fact finder.

19 **OBJECTION NO. 20:**

20 Verigy objects to and moves to strike paragraph 38 (28) of Defendant Romi Mayder. (Text
 21 Omitted). (p.8:26-9:18).

22 **Grounds for Objection:**

23 Verigy objects to and moves to strike this paragraph because it is made in violation of
 24 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 25 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 26 Any statement made on information and belief must state the basis therefore. An affidavit or
 27 declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is
 28 irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion

1 testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v.*
 2 *Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the
 3 declarant's connection with the matters stated therein, establishing the source of his or her
 4 information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999).
 5 Moreover, "a witness should not ordinarily be allowed to express an opinion upon a subject matter
 6 concerning which he is not an expert." *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E.
 7 702. Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801.
 8 Verigy further objects that much of the testimony is secondary evidence of the content of a
 9 writing. F.R.E. 1002. Verigy further objects to the statements because they are speculative and
 10 should be excluded pursuant to F.R.E 403 (exclusion of relevant evidence based on grounds of
 11 prejudice, confusion or waste of time).

12 The entire paragraph is argument, based on Mayder's inadmissible opinions and recitation
 13 of various writings. Mayder does not, within the declaration, lay the foundation to testify on STS'
 14 competitors' products or Verigy's strategic partners. (Mayder Declaration, p.8:26-27, 9:2-3). He
 15 cannot testify about what Dave McMann of Intel said, because that is inadmissible hearsay. (*Id.*,
 16 p.8:27-9:2). Mayder cannot quote Formfactor's website: that is inadmissible hearsay and a
 17 violation of the secondary evidence rule. (*Id.*, p.9:6-9; 9:15-17). Mayder is not qualified to opine
 18 on Verigy's legal claims nor on whether there is a 'competing solution to the STS Flash Enhancer'
 19 sold by a partner of Verigy. (*Id.*, p. 9:10-12). The testimony should also be excluded under
 20 F.R.E. 403 as it lacks probative value and creates undue consumption of time.

21 **OBJECTION NO. 21:**

22 Verigy objects to and moves to strike paragraph 31 (30) of Defendant Romi Mayder. (Text
 23 Omitted). (p.9:19-28).

24 **Grounds for Objection:**

25 Verigy objects to and moves to strike this paragraph because it is made in violation of
 26 Civil L.R. 7-5(b) which provides that a "declaration may only contain facts, must conform as
 27 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 28 Any statement made on information and belief must state the basis therefore. An affidavit or

1 declaration not in compliance with this rule may be stricken in whole or in part.” The evidence is
 2 irrelevant. F.R.E. 402. Verigy further objects to the statements because they constitute opinion
 3 testimony, do not satisfy the requirements of F.R.E. 701, and should be excluded. *Price v.*
 4 *Kramer*, 200 F3d 1237, 1251 (9th Cir. 2000). The declaration itself must contain facts showing the
 5 declarant’s connection with the matters stated therein, establishing the source of his or her
 6 information. F.R.E. 602; *see, United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999).
 7 Moreover, “a witness should not ordinarily be allowed to express an opinion upon a subject matter
 8 concerning which he is not an expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E.
 9 702. Verigy further objects that much of the testimony is inadmissible hearsay. F.R.E. 801.
 10 Verigy further objects that much of the testimony is secondary evidence of the content of a
 11 writing. F.R.E. 1002. Verigy further objects to the statements because they are speculative and of
 12 limited probative value, and thus should be excluded pursuant to F.R.E 403 (exclusion of relevant
 13 evidence based on grounds of prejudice, confusion or waste of time).

14 Mayder’s concluding paragraph is again, improper argument masquerading as testimony.
 15 Defendants’ filings are sufficient to inform the Court as to the relief Defendants seek by way of
 16 the motion for summary adjudication and modification of the preliminary injunction. He is further
 17 not qualified to testify as to whether sales of his Flash Enhancer to ‘non-Verigy’ applications
 18 would impact Verigy’s sales, as he is not an expert in damages. (Mayder Declaration, p.9:19-23).
 19 His final statement of the declaration is a plea for the Court’s mercy with its basis in irrelevant and
 20 unfounded conclusions. His lack of understanding of the judicial process is irrelevant to the
 21 motion, and his reference to Verigy ‘starving’ his company is not only irrelevant, but
 22 inflammatory. (Id., p. 9:26-38). The statements and the paragraph should be stricken on these
 23 basis and because any probative value is minimal in light of the prejudicial nature of such
 24 statements.

25 **OBJECTION NO. 22:**

26 Verigy objects to and moves to strike the entire Declaration of Defendant Romi Mayder
 27 (Text omitted)

28 **Grounds for Objection:**

1 Verigty objects to and moves to strike the declaration because it is made in violation of
 2 Civil L.R. 7-5(b) which provides that a “declaration may only contain facts, must conform as
 3 much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.
 4 Any statement made on information and belief must state the basis therefore. An affidavit or
 5 declaration not in compliance with this rule may be stricken in whole or in part.” Verigty further
 6 objects to the declaration because the statements within are irrelevant, in violation of F.R.E. 402.
 7 Verigty further objects to the statements because they constitute opinion testimony, do not satisfy
 8 the requirements of F.R.E. 701, and should be excluded. *Price v. Kramer*, 200 F3d 1237, 1251
 9 (9th Cir. 2000). The declaration itself must contain facts showing the declarant’s connection with
 10 the matters stated therein, establishing the source of his or her information. F.R.E. 602; *see*,
 11 *United States v. Shumway*, 100 F.3d 1093, 1104 (9th Cir. 1999). Moreover, “a witness should not
 12 ordinarily be allowed to express an opinion upon a subject matter concerning which he is not an
 13 expert.” *Phillips v. U.S.* 356 F.2d 297, 307 (9th Cir. 1965); F.R.E. 702. Verigty further objects
 14 that much of the testimony is inadmissible hearsay. F.R.E. 801. Verigty further objects that much
 15 of the evidence is cumulative and should be excluded pursuant to F.R.E 403 (exclusion of
 16 cumulative or relevant evidence based on grounds of prejudice, confusion or waste of time).

17 In light of objections five (5) through twenty-one (21) most of Defendant Romi Mayder’s
 18 should be excluded. It is largely argument, with little or no facts based on personal knowledge, all
 19 of which violates Civil L.R. 7-5(b). What is not argument tends to be the hearsay interpretations
 20 of what other individuals have said or what other documents contain. There is also Mr. Mayder’s
 21 speculation and opinions as to why Verigty and its counsel have done what they have done, none
 22 of which has the appropriate foundation.

23 The totality of these evidentiary problems justifies the exclusion of the entire declaration.

24 Dated: September 3, 2008

BERGESON, LLP

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By: _____/s/
 Colin G. McCarthy

Attorneys for Plaintiff
 VERIGTY US, INC.

- 21 -